

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

NANTUCKET, SS

SUPERIOR COURT

DOCKET NO. 11-01

IMEC, INC., f/k/a H2O Systems; and,
NORTHSTAR ELECTRICAL
CONSTRUCTION CORPORATION; and,
REMSCO, INC.,

Plaintiffs

v.

ROBERT V. MATTHEWS, *Individually*,

Defendant

And

MARIA SNEDEN MATTHEWS, *Individually*,
CHARTIS, INC.,
OOPS, INC.,
KEITH MAHLER, *Individually*,
EQUIPMENT LEASING
INTERNATIONAL, LLC,

Reach and Apply Defendants

STURGEON CAPITAL MANAGEMENT, INC.,
U.S. BANKCORP, N.A.,
LEGACY BANK, FLORIDA
DEUTSCHE BANK, N.A., *a/k/a Deutsche Bank*
Trust Company Americas, Inc.,
TD BANK, N.A.,
IBERIA BANK, *f/k/a Orion Bank, INC.*,
JP MORGAN PRIVATE BANK, INC.,
WACHOVIA BANK, INC.,
FIFTH THIRD BANK, N.A.

Trustee Process Defendants

VERIFIED

COMPLAINT

Rules: 4.2, 4.3, 65, 69

COMPLAINT

Nantucket Superior Court
A TRUE COPY, CERTIFIED,

Clerk

Date

August 28, 2018

This is an action to recover of ROBERT V. MATTHEWS, *individually*, (the “Debtor”), \$2,051,000.00, by certain judgments (*together*, the “Judgment”) issued by the Nantucket Superior Court on August 9, 2010, pursuant to Mass. R. Civ. P. 4.3, 69 and 71.

On or about November 15, 2010, Plaintiffs came to learn the Debtor induced or otherwise caused a fraudulent \$6,000,000.00 *second mortgage* assignment (the “Assignment”) in his *non-exempt* Nantucket Home be assigned to Oops, Inc., (“OOPS”), a Connecticut corporation, by and through his “friend”, Keith Mahler, (“Mahler”), an insider, with the intent to hinder, delay or otherwise place the Nantucket Home beyond Plaintiffs’ Judgment recovery.

Plaintiffs’ aver also the *reach and apply* and the *trustee process* defendants are persons in possession of certain assets of the Debtor chargeable to Plaintiffs’ claims in satisfaction of the Judgment.

Plaintiffs’ request this Court issue (i) a Temporary Restraining Order and Preliminary Injunction restraining the Debtor from any further sale, transfer, assignment, encumbrance or other alienation of interest in the Nantucket Home (*pending further order of this Court*); and, (ii) a Declaratory Judgment declaring the Assignment void, or alternatively, set aside as a fraudulent conveyance; and, (iii) issue writs of attachment on trustee process of the goods and effects of the Debtor in possession of the defendant trustees.

The Parties

1. Plaintiffs IMEC, Inc., (“IMEC”), NorthStar Electrical Construction Corp., (“NSEC”) and Remsco, Inc., (“REMSCO”), *hereinafter together*, (the “Plaintiff”) are Massachusetts’ corporations having principal business offices and operations in Massachusetts.

2. Robert V. Matthews (the “Debtor”) is an individual and the judgment debtor having residential addresses in Massachusetts, Connecticut and Florida.
3. *Reach and Apply Defendant* Maria Sneden Matthews (“Ms. Matthews”) is an individual having residential addresses in Massachusetts, Connecticut and Florida. The Debtor and Ms. Matthews are a married couple having two (2) minor daughters *together* residing at 101 Casa Bendita, Palm Beach, Florida.
4. *Reach and Apply Defendant* Oops, Inc., (“OOPS”) is a Connecticut Corporation of 11 Scovill Street, P.O. Box 2763, Waterbury, Connecticut 06723 having engaged in business within the Commonwealth of Massachusetts.
5. *Reach and Apply Defendant* Keith Mahler, (“Mahler”) is an individual and the prospector of the purported “business entity” OOPS. Mr. Mahler has engaged in business and/or otherwise has an interest in real property within the Commonwealth of Massachusetts.
6. *Reach and Apply Defendant* Chartis, Inc., (“Chartis”) is a world-wide “high net-worth” asset-custodian and general insurance company with offices in Massachusetts at 99 High Street, No. 31, Boston, Massachusetts 02110.
7. *Trustee* Sturgeon Capital Management, Inc., is a *self-styled* “private wealth” asset management company having recorded with the Secretary of State a principal place

of business at 300 Commercial Street, Boston, MA 02109.

8. *Trustee* U.S. Bankcorp, N.A., (“US Bank”) is a national banking corporation having its corporate headquarters at U.S. Bankcorp Center, 8000 Nicollet Mall, Minneapolis, Minnesota N 55402 (641-466-3000). US Bank conducts business inside Massachusetts. On information and belief, trustee is a custodian in possession of Debtor funds.
9. *Trustee* Legacy Bank, Inc., (“Legacy”) is a West Palm Beach bank having its principal place of business at Concourse Towers, II, 2090 Palm Beach Lakes Boulevard, Suite 100, West Palm Beach, FL 33409. Legacy Bank has transacted business inside Massachusetts. On information and belief, trustee is a custodian in possession of Debtor funds.
10. *Trustee* Deutsche Bank, A.G. *a/k/a Deutsche Bank Trust Company Americas, Inc.*, is a global banking organization having national association with customers, branches and offices in Massachusetts – *namely*, 225 Franklin Street, 25th Floor, Boston, MA 02110. Trustee has a local branch at 350 Royal Palm Way, Palm Beach, FL 33480. On information and belief, trustee is a custodian in possession of Debtor funds.
11. *Trustee* TD Bank, N.A., (“TD BANK”) is a banking organization having national association with customers, branches and offices in Massachusetts – *namely*, 370 Main Street, Worcester, MA 01608. On information and belief, trustee is a custodian

in possession of Debtor funds.

12. *Trustee Iberia Bank, Inc.*, is a banking organization having national association with customers and its principal place of business at 11345 Legacy Avenue, Building D-Suite 101, Palm Beach Gardens, FL 33410. On information and belief, trustee is a custodian in possession of Debtor funds.
13. *Trustee J.P. Morgan Private Bank, Inc.*, is a banking organization having national association with customers and its principal place of business at 205 Royal Palm Way, Palm Beach, FL 33480. On information and belief, trustee is a custodian in possession of Debtor funds.
14. *Trustee Wachovia Bank, Inc.*, is a banking organization having national association with customers and its principal place of business at 411 S County Road, Palm Beach, FL 33480. On information and belief, trustee is a custodian in possession of Debtor funds.
15. *Trustee Fifth Third Bank, N.A.*, is a banking organization having national association with customers and its principal place of business at 319 Peruvian Avenue, Palm Beach, FL 33480. On information and belief, trustee is a custodian in possession of Debtor funds.

16. Equipment Leasing International, LLC, (“ELI”) is a Florida limited liability company having its principal business at 11198 Polo Club Road, Wellington, Florida, 33418. ELI claims a purported interest in Massachusetts real property.

Jurisdiction and Venue

17. This Court has subject matter jurisdiction over this action because it is a civil action with an amount in controversy in excess of \$25,000.00; and, this Court has both general and specific personal jurisdiction over each of the parties herein pursuant to Mass. Gen. Laws ch. 223A, §3(a) and (c) (*long arm*); ch. 214, §3 (8) (*Reach and Apply*); ch. 246, §1, *et. seq.*, (*trustee process*); and, ch. 231A, §1 (*Declaratory Judgment*).

The Relevant History

18. On August 9, 2010, Plaintiffs IMEC, NSEC, and REMSCO, recovered of the Debtor, *individually*, the sum of \$822,551.00, \$399,593.71, \$833,353.39, *respectively*, inclusive of pre-judgment interest and fees or, *collectively*, \$2,055,498.10. Exhibit A.
19. On August 9, 2010, Plaintiffs duly recorded individual Writs of Attachments and Executions (levy and suspend), issued by *judicial fiat*, against all right, title and interest of the Debtor’s Nantucket Home in the amount \$2,091,879.00 in records of the Nantucket Registry of Deeds. Exhibit B.
20. The Debtor is sole owner in fee of the Nantucket Home. Exhibit C.

21. On June 25, 2010, the Debtor induced or otherwise caused a fraudulent \$6,000,000.00 *second mortgage* assignment (the “Assignment”) on his Nantucket Home be assigned to Oops, Inc., (“OOPS”) by and through his “friend”, Keith Mahler (“Mahler”), an insider. A true copy of the Assignment is attached at Exhibit D.
22. On June 28, 2010, the Debtor, by and through OOPS, promptly collateralized the purported Assignment against a \$775,277.41 loan agreement (the “Loan Agreement”) between ELI and the Debtor.
23. ELI is *controlled* by Mr. Glenn Straub (“Straub”), on information and belief, also an insider. A true copy of the Loan Agreement is attached hereto as Exhibit E.
24. The Debtor induced or otherwise caused the \$6,000,000.00 Assignment to OOPS, and subsequently collateralized the Assignment, with the specific intent to hinder, delay or otherwise frustrate the Plaintiffs’ recovery.
25. The Loan Agreement states *expressly* that “...both the Lender [“Straub”] and Borrower [“Debtor-Mathews”] have contributed substantially and materially to the negotiation and preparation of this Agreement.” (Loan Agreement at ¶ 8).
26. The Loan Agreement terms direct OOPS to transfer “*simultaneously with the execution of this Agreement... [] the \$6,000,000.00 Assignment to Point Breeze Holdings, LLC,*” a company controlled also by Straub. (Loan Agreement at ¶ 4).

27. The Loan Agreement terms direct further that “*upon Lender’s receipt of the [the Assignment], Lender shall wire the sum of \$773,277.41 to J.P. Morgan Chase*” for the benefit of the Debtor.
28. J.P. Morgan Chase is the first mortgagee of the Debtor’s Nantucket Home.
29. The Loan Agreement states further that the Debtor shall then sell the Nantucket Home and “*shall utilize the proceeds from the sale of the Nantucket Home [] to fund a Trust to be formed for the benefit of [the Debtor’s wife] Mia Matthews and her two (2) daughters as beneficiaries.*” (Loan Agreement at ¶ 7).
30. The Loan Agreement states also that “*Borrower [“Matthews”] unequivocally and unconditionally agrees that the Trustee under the [] Trust shall be appointed by Glenn F. Straub, and no substitute Trustee may be appointed...[]*” (Loan Agreement at ¶7).
31. The maturity date under the Loan Agreement was August 27, 2010. (Loan Agreement at ¶ 1(a)).
32. Not surprisingly, the Debtor defaulted on the Loan Agreement.
33. Fifty-three (53) days after the Debtor’s purported default on the Loan Agreement, Straub, by and through ELI, sought judgment against the Debtor for breach of the Loan Agreement. See, e.g., *Equipment Leasing International, LLC, v. Robert V.*

Matthews, et. al., Palm Beach County 15th Judicial Circuit Case No.: 50 2010 CAO 26089. (October, 2010).

34. On information and belief, the Debtor, Mahler and Straub, by and through their purported “business” entities, conspired to fraudulently assign the \$6,000,000.00 second mortgage Assignment interest in the Debtor’s Nantucket Home with the specific intent to alienate that equity interest beyond the reach of the Plaintiffs.
35. On information and belief, the Debtor, Mahler and Straub intend to cause a foreclosure on the \$6,000,000.00 second mortgage to extinguish the Plaintiff judgment creditors’ attachment interests on the Nantucket Home; and, thereby frustrate the Plaintiffs’ Judgment recovery.
36. On information and belief, the Debtor, Mahler and Straub are engaged in a fraudulent scheme to transfer the Debtor’s Nantucket Home, or sale proceeds thereof, into a Trust beyond the Plaintiffs’ reach.
37. On information and belief, the Debtor has no other real property located within the Commonwealth of Massachusetts.
38. The Debtor’s right, title and interest in property the Plaintiffs’ seek to reach and apply in this action is in existence as of the date of filing this Complaint and cannot be taken or attached on execution. Specifically, the property is a \$6,000,000.00 *intangible* equity interest in the possession of OOPS, collateralized against a

purported defaulted Loan Agreement, the breach of which permits a straw trustee be appointed to capture the Nantucket Home, or sale proceeds thereof, in trust for the benefit of the Debtor's wife and two daughters.

39. The Debtor claims he is insolvent.

40. The Debtor, at present, owns in fee three (3) private residences valued *collectively* at \$30,200,000.00, *specifically*, 101 Casa Bendita, Palm Beach, FL, (\$18,500,000.00); 115 Lower Church Hill Street, Washington, CT. (\$2,200,000.00); and, 11 Cliff Road, Nantucket, MA (\$9,500,000.00). Exhibit F.

41. Post Judgment discovery shows the Debtor possesses a substantial equity interest in each of the Properties.

42. Post Judgment discovery shows the Debtor, by and through his purported "business entities", came into approximately \$100,000,000.00 in loans, notes and guarantees (the "Loans") from public banking and private equity firms between January 1, 2008 and June 15, 2010 (the "Relevant Period"). Exhibit G.

43. On information and belief, and discovery will show, the Debtor continues to possess and/or control a substantial amount of the Loans in cash, securities and in equity interests in the Properties.

44. On information and belief, the money in the foregoing Paragraph 39 is outside the Commonwealth of Massachusetts, and likely outside of the United States, and/or

exempt real property under the Florida Homestead Statute, and therefore beyond the reach of the Judgment creditor Plaintiffs.

45. ELI and the Point Breeze Holdings, LLC are owned and controlled by Straub.
46. On information and belief, and discovery will show, Ms. Maria Sneden Matthews, Chartis Inc., Oops, Inc., Mahler and ELI are persons in possession of present or future interests in funds and assets belonging to the Debtor.
47. Plaintiffs' aver, and discovery will show, Sturgeon Capital Management, Inc., US Bank, N.A., Legacy Bank of Florida, Inc., Deutsche Bank, N.A., and TD Bank, N.A., Iberia Bank, Inc., J.P. Morgan Private Bank, Inc., Wachovia Bank, Inc., Fifth Third Bank, N.A., are *trustee* custodians in possession or control of Debtor funds.
48. The Debtor's real property (the "Nantucket Home") in controversy is more particularly and sufficiently described in the attached Exhibit C.
49. The real property Assignment interest in controversy is more particularly and sufficiently described in the attached Exhibit D.

COUNT I FAILURE TO PAY JUDGMENT

50. Plaintiffs repeat and re-aver paragraphs 1 through 49 of this Complaint.

51. On August 9, 2010, Plaintiffs recovered a \$2,055,498.10 money judgment (the “Judgment”) against the Debtor entered by the Nantucket Superior Court, Civil Action No^s: NACV-2009-00034, 35, 36. Exhibit A.

52. The Debtor made no payment toward satisfaction of the Judgment.

53. The Judgment debt with interest is \$2,159,738.35 as of January 8, 2011.

54. The per diem is \$694.94.

55. As a direct and proximate result of Debtor’s failure to pay the Judgment, Plaintiffs sustained losses and continue to suffer substantial damages.

Wherefore, Plaintiffs request this Court ORDER the Debtor to pay the Judgment; or, alternatively, appear before this Court for an examination of the Debtor’s assets; or, alternatively, to appear to show cause why he should not pay the Judgment, and for such other and further relief as this Court deems fair and just.

COUNT II FAUDULENT TRANSFER

(Action to Avoid Assignment Transfer to Oops, Inc.)

56. Plaintiffs repeat and re-aver paragraphs 1 through 55 of this Complaint.

57. On or about June 25, 2010, Debtor induced or otherwise caused a \$6,000,000.00 second mortgage Assignment lien in his Nantucket Home be conveyed to OOPS with

the intent to hinder, delay or defraud Plaintiffs' satisfaction of its execution on the Judgment.

58. On information and belief, the purported Assignment conveyance was for no or nominal consideration.

59. On information and belief, OOPS and Mahler are an affiliate and/or insider under M.G.L. c. 109A, §2, *et. seq.*

60. The Debtor induced or otherwise caused the Assignment to OOPS subsequent to Plaintiffs' civil complaint against Debtor.

61. The Debtor has retained constructive possession and actual control of the Assignment, as well as actual possession of the Nantucket Home.

62. The Debtor claims he was insolvent at the time of the conveyance of the Assignment.

63. The June 25, 2010 Assignment conveyance to OOPS was fraudulent as to the Debtor's creditors without regard to the Debtor's actual intent in violation of the Massachusetts Uniform Fraudulent Transfer Act. M.G.L. c. 109A, *et. seq.*

Wherefore, Plaintiffs request this Court (i) set aside the Assignment as a fraudulent conveyance; and, (ii) restrain and enjoin the Debtor, and his agents, from any further assignment, transfer, sale, encumbrance or other hypothecation of interest in the Nantucket Home pending further order of this Court; and, grant such other and further relief as this Court deems fair and just.

COUNT III DECLARATORY JUDGMENT

(Action to Avoid the Assignment Lien Interest)

64. Plaintiffs repeat and re-aver paragraphs 1 through 63 of this Complaint.

65. An actual controversy has arisen between the Plaintiffs' Judgment lien interest and the Judgment Debtor's interest in real property within Massachusetts; *namely*, the Assignment and the Nantucket Home.

66. An actual controversy has arisen between the Plaintiffs' Judgment lien interest and OOPS purported interest in real property within Massachusetts, *namely*, the Assignment and the Nantucket Home.

67. Plaintiffs' aver the \$6,000,000.00 Assignment conveyance attempting to create a lien interest in OOPS is void by operation of law and therefore the OOPS Assignment interest as against the Nantucket Home is void *ab initio*.

68. Alternatively, Plaintiffs' aver the OOPS Assignment interest is voidable by Judgment of this Court upon well recognized equitable remedies.

Wherefore, Plaintiffs seek a Declaratory Judgment as against the Debtor stating that (i) the Assignment Lien is extinguished by law and therefore void *ab initio*, or otherwise voidable; and subsequently, Plaintiffs' seek this Court order (ii) a discharge of the Assignment be forthwith recorded in the records of the Nantucket Registry of Deeds; and, (iii) order and grant such other and further relief as this Court deems fair and just.

COUNT IV EQUITABLE ESTOPPEL
(Action to Avoid the Assignment Lien Interest)

69. Plaintiffs repeat and re-aver paragraphs 1 through 68 of this Complaint.

70. The Debtor knew of the Plaintiffs' civil complaint and action at the time he induced or otherwise caused the fraudulent conveyance of the Assignment.

71. The Debtor willfully induced or caused the fraudulent Assignment conveyance with the intent to hinder, delay or otherwise place the Nantucket Home beyond the reach of the Judgment Creditor Plaintiffs.

72. The Plaintiffs' are entitled to recovery against the Judgment Debtor for losses sustained as a direct and proximate result of the Debtor's conduct.

73. The Debtor's present scheme to cause his Nantucket Home, or sale proceeds thereof, to be transferred in Trust for the benefit of his wife and two daughters is a fraudulent attempt to frustrate the Plaintiffs' rightful claims against the Debtor.

74. The Nantucket Home is the only remaining real property, and personal property, belonging to the Debtor within Massachusetts.

75. The plaintiffs' recovery will be defeated, or substantially diminished, if the Debtor is permitted to maintain the fraudulent conveyance and/or transfer his Nantucket Home in trust beyond the reach of the Plaintiffs' rightful recovery.

76. The Debtor is not entitled to benefit himself upon the consequences of his fraud by expanding the expense of the Plaintiffs injury.

77. As a direct and proximate result of the Debtor's conduct, the Plaintiffs' sustained substantial damages.

Wherefore, Plaintiffs seek this Court (i) set aside the Assignment conveyance as unjust; and/or alternatively, (ii) extinguish the Assignment lien interest; and, (iii) order and grant such other and further relief as this Court deems fair and just.

COUNT V REACH AND APPLY

*(Action to Reach and Apply the Assignment
interest in possession of Oops, Inc.)*

78. Plaintiffs repeat and re-aver paragraphs 1 through 77 of this Complaint.

79. The property of the Debtor in the instant action, *namely*, a \$6,000,000.00 *intangible* equity interest of a purported Assignment interest, is not subject to be attached or taken on execution.

80. Plaintiffs have asserted claims for damages in this action arising out of the purported Assignment to OOPS.

81. Plaintiffs are entitled to reach and apply OOPS interest in the Assignment to satisfy a Judgment in this action.

Wherefore, to the extent the Assignment is valid, Plaintiffs request this Court allow the Plaintiffs to reach and apply OOPS interest in the Assignment in satisfaction of the Plaintiffs' Judgment, and request this Court award such other and further relief as this Court deems fair and just.

COUNT VI REACH AND APPLY

(Reach and Apply Against Maria Sneden Matthews)

82. Plaintiffs repeat and re-aver paragraphs 1 through 81 of this Complaint.
83. Plaintiffs have asserted claims for damages in this action against the Debtor.
84. On information and belief, the Debtor owns a fee interest in that certain real property located at 115 Lower Churchill Road, Washington, Connecticut 06794.
85. The Debtor owns the Nantucket Home in fee.
86. ELI purportedly paid \$774,277.41 to J.P. Morgan Chase, Inc., the first mortgagee of the Nantucket Home.
87. On June 29, 2010, Maria Sneden Matthews purportedly assigned "*the first \$775,277.41 of [a] anticipated*" distribution to ELI, for the benefit of the Debtor.
88. Plaintiffs are entitled to reach and apply Maria Sneden Matthews possession and interest in the \$774,277.41 distribution to ELI to satisfy, in part, the Plaintiffs' Judgment in this action.

COUNT VII REACH AND APPLY

(Action to Reach and Apply Chartis)

89. Plaintiffs repeat and re-aver paragraphs 1 through 88 of this Complaint.
90. ELI purportedly paid \$774,277.41 to J.P. Morgan Chase, Inc., the first mortgagee of the Nantucket Home.
91. On information and belief, Chartis is an insurer and/or custodian of funds for high net worth private individuals, such as the Debtor.
92. On information and belief, the Debtor has asserted claims against Chartis for a \$774,277.41 distribution in part to satisfy the purported debt the Debtor owes ELI for payments made by ELI to J.P. Morgan Chase, Inc., the first mortgagee of the Nantucket Home.
93. Plaintiffs are entitled to reach and apply the \$774,277.41 distribution to ELI to satisfy, in part, the Plaintiffs' Judgment in this action.

COUNT VIII REACH AND APPLY

(Action to Reach and Apply Equipment Leasing International, LLC)

94. Plaintiffs repeat and re-aver paragraphs 1 through 93 of this Complaint.

95. On information and belief, ELI has asserted claims against Chartis for a \$774,277.41 distribution in part to satisfy a debt the Debtor owes ELI for payments made by ELI to J.P. Morgan Chase, Inc., the first mortgagee of the Nantucket Home.

96. Plaintiffs are entitled to reach and apply the \$774,277.41 distribution to ELI to satisfy, in part, the Plaintiffs' Judgment in this action.

COUNT IX TRUSTEE PROCESS

*(Action for Writ of Attachment and Summons against
Trustee Sturgeon Capital Management, Inc.)*

97. Plaintiffs repeat and re-aver paragraphs 1 through 96 of this Complaint.

98. On August 9, 2010, the Plaintiffs recovered a \$2,055,498.10 Judgment by *judicial fait* against the Debtor, *individually*.

99. The Debtor has made no payment on the Judgment.

100. Plaintiffs have suffered losses and sustained damages as a direct result of Debtor's failure to pay the Judgment.

101. Plaintiffs aver that unless the attachment is allowed *ex parte*, the Debtor, if he receives notice in advance of the attachment on trustee process, will withdraw, conceal or consume the funds on deposit.

102. On information and belief, trustee Sturgeon Capital Management, Inc., is in possession of Debtor funds.

103. There is no liability insurance known or shown by the defendant Debtor to be available to satisfy the Judgment.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT X TRUSTEE PROCESS

*(Action for Writ of Attachment and Summons against
Trustee U.S. Bankcorp, N.A.)*

104. Plaintiffs repeat and re-aver paragraphs 1 through 103 of this Complaint.

105. On information and belief, trustee U.S. Bankcorp, N.A., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XI TRUSTEE PROCESS

*(Action for Writ of Attachment and Summons against
Trustee Legacy Bank of Florida, Inc.)*

106. Plaintiffs repeat and re-aver paragraphs 1 through 105 of this Complaint.
107. On information and belief, trustee Legacy Bank of Florida, Inc., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XII TRUSTEE PROCESS

*(Action for Writ of Attachment Summons against
Trustee Deutsche Bank, N.A., a/k/a, Deutsche Bank Trust Company, Americas, Inc.)*

108. Plaintiffs repeat and re-aver paragraphs 1 through 107 of this Complaint.
109. On information and belief, trustee Deutsche Bank, N.A., a/k/a, Deutsche Bank Trust Company, Americas, Inc is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XIII TRUSTEE PROCESS

*(Action for Writ of Attachment Summons against
Trustee TD Bank, N.A.)*

110. Plaintiffs repeat and re-aver paragraphs 1 through 109 of this Complaint.

111. On information and belief, trustee TD Bank, N.A., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XIV TRUSTEE PROCESS

*(Action for Writ of Attachment Summons against
Trustee Iberia Bank, f/k/a, Orion Bank, Inc.)*

112. Plaintiffs repeat and re-aver paragraphs 1 through 111 of this Complaint.

113. On information and belief, trustee Iberia Bank, f/k/a, Orion Bank, Inc., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XV TRUSTEE PROCESS

*(Action for Writ of Attachment Summons against
Trustee J.P. Morgan Private Bank, Inc.)*

114. Plaintiffs repeat and re-aver paragraphs 1 through 113 of this Complaint.

115. On information and belief, trustee J.P. Morgan Private Bank, Inc., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XVI TRUSTEE PROCESS

*(Action for Writ of Attachment Summons against
Trustee Wachovia Bank, Inc.)*

116. Plaintiffs repeat and re-aver paragraphs 1 through 115 of this Complaint.

117. On information and belief, trustee Wachovia Bank, Inc., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XVII TRUSTEE PROCESS

*(Action for Writ of Attachment Summons against
Trustee Fifth Third Bank, N.A.)*

118. Plaintiffs repeat and re-aver paragraphs 1 through 117 of this Complaint.

119. On information and belief, trustee Fifth Third Bank, N.A., is in possession of Debtor funds.

Wherefore, Plaintiffs' request this Court issue writ of attachment and summons as against all goods, effects, credits, cash and other values of the Debtor in possession of the Trustee in the amount up to and including \$2,000,000.00.

COUNT XVIII TORTIOUS INTERFERENCE WITH JUDGMENT

(v. Mahler)

120. Plaintiff repeats and re-avers paragraphs 1 through 119 of this Complaint.
121. Plaintiffs' aver Matthews acted as a principal with the knowing and purposeful intent to hinder, delay or defraud the Plaintiffs Judgment recovery.
122. Plaintiffs' aver Mr. Keith Mahler ("Mahler") acted as agent of the Debtor principal with the knowingly and purposeful intent to hinder, delay or defraud the Plaintiffs Judgment recovery.
123. As a direct and proximate result of Matthews and Mahler's conduct, Plaintiffs sustained damages.

Wherefore, Plaintiffs' seek this Court award damages as against Matthews and Mahler after trial on the merits and in an amount commensurate with Plaintiffs' damages, or as this Court deems fair and just.

Prayers for Relief

WHEREFORE, Plaintiffs request this Court:

- a. Issue a short order notice to schedule a hearing, *Ex Parte*, on Plaintiffs' request for temporary restraining orders, preliminary injunctions, reach and apply and trustee

process counts, as set forth more fully in the Plaintiffs' *Ex Parte* Motion and Memorandum of Law, attached herewith, for January 21, 2011; AND,

- b. Issue a Temporary Restraining Order and Preliminary Injunction (*together*, the "First TRO") enjoining the Debtor, or anyone acting by and through the Debtor, or on his behalf, inclusive of his spouse, Maria Sneden Matthews, from selling, transferring, assigning, encumbering, hypothecating, converting or otherwise alienating any interest in the Nantucket Home pending further order of this Court, pursuant to Mass. R. Civ. P. 65; AND,
- c. Issue a Temporary Restraining Order and Preliminary Injunction (*together*, the "Second TRO") that restrains and enjoins the Debtor, or anyone acting by and through the Debtor, or on his behalf, inclusive of his spouse, Maria Sneden Matthews, Chartis, ELI, OOPS and Mahler from selling, transferring, assigning, encumbering, destroying, converting or otherwise alienating any interest in the \$774,277.41 distribution; and, Order any proceeds from said distribution be deposited with the Court pending further order of this Court, pursuant to Mass. R. Civ. P. 65; AND,
- d. Issue a Declaratory Judgment that the Assignment Lien is extinguished by operation of law, void *ab initio*; alternatively,
- e. Order the \$6,000,000.00 second mortgage Assignment to Oops, Inc., ("OOPS") set aside as a fraudulent conveyance, pursuant to Mass. Gen. L. ch. 109A, *et. seq.*; AND,

- f. Issue a Temporary Restraining Order and Preliminary Injunction (*together*, the “Third TRO”) granting an injunction ordering sale proceeds from any foreclosure action or other equitable transfer of interest in the Nantucket Home be placed in escrow with a Court appointee pending the result of this litigation or further order of this Court; AND,
- g. Order that the Plaintiffs be permitted to reach and apply all the Debtor’s legal, beneficial, or equitable interest in possession of the reach and apply defendants Maria Sneden Matthews, Chartis, Inc., Oops, Inc., Mahler, Equipment Leasing International, LLC, and to liquidate same as necessary and to apply the proceeds thereof in satisfaction of the Plaintiffs’ Judgment, pursuant to Mass. Gen. L. ch. 214, §3 (6); AND,
- h. Issue writs of attachment on trustee process with respect to all funds, goods, effects and credits, up to and including \$2,000,000.00 as set forth in the preceding Counts XI through XVII in satisfaction of the Judgment, pursuant to Mass. Gen. L. ch. 246, §1, *et. seq.*; and,
- i. After trial on the merits and entry of Judgment in favor of the Plaintiffs, enter appropriate orders authorizing the Plaintiffs to reach and apply the interest of the Debtor in possession of the reach and apply defendants; AND,
- j. Order the Debtor to pay the Judgment to the Plaintiffs within thirty (30) days of the date of the Court’s Order; AND, if the Debtor fails to pay,

- k. Issue Summons ordering the Debtor to appear before this Court for examination and inquiry into the Debtor's assets and ability to pay the Plaintiffs, or answer why he should not, pursuant to Mass. R. Civ. P. 4.3 and 69; AND,
- l. Order such other and further relief as this Court deems fair and just.

The Plaintiffs Demand a Jury Trial as to All Issues so Triable.

Jurat (Remsco, Inc.)

Now comes Mark Conley, President of Remsco, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon my personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.

/s/ see next following page

Mark Conley, President, Remsco, Inc.

January 14, 2011

Jurat (IMEC, Inc.)

Now comes Joseph F. D'Ambrosio, President of IMEC, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon my personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.

/s/ see next following page


Joseph F. D'Ambrosio, President of IMEC, Inc.,

January 14, 2011

The Plaintiffs Demand a Jury Trial as to All Issues so Triable.

Jurat (Remsco, Inc.)

Now comes Mark Conley, President of Remsco, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon having personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.


Mark Conley, President, Remsco, Inc.

January 14, 2011

Jurat (IMEC, Inc.)

Now comes Joseph F. D'Ambrosio, President of IMEC, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon having personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.

Joseph F. D'Ambrosio, President of IMEC, Inc.,

January 14, 2011

- k. Issue Summons ordering the Debtor to appear before this Court for examination and inquiry into the Debtor's assets and ability to pay the Plaintiffs, or answer why he should not, pursuant to Mass. R. Civ. P. 4.3 and 69; AND,
- l. Order such other and further relief as this Court deems fair and just.

The Plaintiffs Demand a Jury Trial as to All Issues so Triable.

Jurat (Remsco, Inc.)

Now comes Mark Conley, President of Remsco, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon my personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.

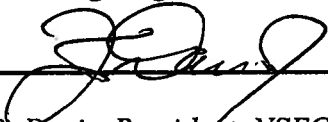
/s/ see next following page

Mark Conley, President, Remsco, Inc.

January 14, 2011

Jurat (NSEC)

Now comes James R. Davis, President of NSEC, a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon my personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.



James R. Davis, President, NSEC

January 14, 2011

The Plaintiffs Demand a Jury Trial as to All Issues so Triable.

Jurat (Remsco, Inc.)

Now comes Mark Conley, President of Remsco, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon having personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.

Mark Conley, President, Remsco, Inc.

January 14, 2011

Jurat (IMEC, Inc.)

Now comes Joseph F. D'Ambrosio, President of IMEC, Inc., a Plaintiff in this civil action, and having had the benefit of meeting and speaking with the Debtor on several occasions, and having read and reviewed the contents of this Verified Complaint to Restrain and Enjoin the Debtor, to Reach and Apply and Trustee Process the additional defendants, I depose and say under oath and upon having personal knowledge of the facts contained herein, that the allegations contained herein are true, except that those alleged to be upon information and belief, I believe to be true based upon my conversations, experience and knowledge of the Debtor and the events and circumstances giving rise to the Plaintiffs' claims herein.



Joseph F. D'Ambrosio, President of IMEC, Inc.,

January 14, 2011

Respectfully submitted,

Plaintiffs,
IMEC, Inc.,
NSEC, and REMSCO, Inc.,

By its attorney,



James R. Davis, Esq. (BBO# 649750)
DAVIS-REILLY & ASSOCIATES, P.C.
P.O. Box 2052
6 Canonicus Street
Nantucket, MA 02554
843.364.2218
888.390.6211 (t)
jim.northstar@gmail.com

Dated: January 14, 2011

EXHIBIT V

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into on this 28th day of June, 2010, by and between Robert V. Matthews ("Borrower") and Equipment Leasing International, LLC, a Florida limited liability company ("Lender").

WITNESSETH:

WHEREAS, Borrower has requested that Lender make a loan to Borrower in the amount of \$775,277.41 as evidenced by a Promissory Note With Balloon Payment of even date (the "Loan"); and

WHEREAS, Lender is willing to make the Loan to Borrower upon the terms and conditions set forth herein.

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignors and Assignee agree as follows:

1. Simultaneously with the execution of this Agreement, Borrower shall execute and deliver to Lender a Promissory Note With Balloon Payment (the "Note") in favor of Lender in the principal amount of \$775,277.41 (the "Loan"). The Note shall provide that the Loan shall accrue interest at the rate of 18% and be payable in full, principal and interest, on August 27, 2010.

2. Simultaneously with the execution of this Agreement, Borrower shall execute and deliver to Lender an assignment of all of their right, title and interest in that certain loss dated February 28, 2010 bearing Claim Number 519342 with Private Client Group at Chartis Insurance (the "Insurance Proceeds") provided however that the assignment shall only be for the full amount of the Loan and that any proceeds that exceed the full value of the Loan Assignors shall be entitled to retain.

3. Simultaneously with the execution of this Agreement, Borrower shall execute and deliver to Lender a UCC-1 Financing Statement that covers "all contents, furnishings, art, fixtures and personal property located in, on and around the home of Mia Matthews and Robert V. Matthews which home is located at 101 Casa Bendita, Palm Beach, FL 33414."

4. Simultaneously with the execution of this Agreement, Oops, Inc. shall execute and deliver to Point Breeze Holdings, LLC, an affiliate of Lender, an assignment of (i) the Second Mortgage, Financing Statement and Security Agreement (the "Mortgage") from Robert V. Matthews (the "Mortgagor") to TD Bank, N.A. f/k/a TD Banknorth, N.A., dated as of January 15, 2008 and recorded with the Nantucket Registry District of the Land Court (the "Registry") as Document No. 122930 and (ii) the Assignment of Leases and Rents from the Mortgagor to TD Bank, N.A. f/k/a TD

Banknorth, N.A., dated as of January 15, 2008 and recorded with the Registry as Document No. 122931.

5. Simultaneously with the execution of this Agreement, Oops, Inc. shall execute and deliver to Point Breeze Holdings, LLC, an affiliate of Lender, an Assignment of Loan Documents and Transfer of Debts and Liens pursuant to which Oops, Inc. shall transfer and assign to Point Breeze Holdings, LLC:

- (a) That certain promissory note (the "Note") dated January 15, 2008, executed by PB Realty Holdings, LLC, a Massachusetts limited liability company (herein referred to as "Borrower"), and payable to the order of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor in the original principal amount of \$40,582,000.00, and all indebtedness now or hereafter evidenced thereby;
- (b) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Construction Loan Agreement between TD Bank, N.A. f/k/a TD Banknorth, N.A. and Borrower dated January 15, 2008;
- (c) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Payment Guaranty from Robert V. Matthews ("Guarantor") to TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor dated January 15, 2008 (the "Payment Guaranty");
- (d) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Mortgage, Financing Statement and Security Agreement (the "Mortgage") dated as of January 15, 2008 and recorded with the Nantucket Registry of Deeds in Book 1122; Page 209;
- (e) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Second Mortgage, Financing Statement and Security Agreement (the "Second Mortgage") dated as of January 15, 2008 and recorded with the Nantucket Registry District of the Land Court (the "Nantucket Registry") as Document Number 122930, executed by Guarantor for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor to secure payment of the Note and the Payment Guaranty;
- (f) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of

TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Assignment of Leases and Rents (the "Matthews Assignment of Rents") dated as of January 15, 2008 and recorded with the Nantucket Registry as Document Number 122931;

- (g) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Third Mortgage, Financing Statement and Security Agreement dated as of January 15, 2008 and recorded with the Palm Beach County Recorders Office (the "Palm Beach County Recorder") in Book 22407, Page 1070, as confirmed by that certain Confirmatory Third Mortgage, Financing Statement and Security Agreement dated as of January 15, 2008 and recorded with the Palm Beach County Recorder in Book 22429, Page 1742 (the "Third Mortgage"), executed by NHM Realty LLC ("Other Guarantor") for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor to secure payment of the Note and that certain Guaranty from the Other Guarantor to TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor dated as of January 15, 2008 (the "Other Guaranty");
- (h) all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor under that certain Assignment of Leases and Rents dated as of January 15, 2008 and recorded with the Palm Beach County Recorder in Book 22407, Page 1097, as confirmed by that certain Confirmatory Assignment of Leases and Rents dated as of January 15, 2008 and recorded with the Palm Beach County Recorder in Book 22429, Page 1769 (the "NHM Assignment of Rents");
- (i) all other liens, security interests, lien priority agreements, guaranties, collateral assignments, covenants, agreements, rights, benefits, and privileges in any way belonging or to accrue to the benefit of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor, in respect of the Mortgage, Second Mortgage, the Matthews Assignment, the Third Mortgage, the NHM Assignment or the Note and any indebtedness now or hereafter evidenced thereby or any security for them that are in the possession of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor and that Assignor has the legal right to transfer to Assignee;
- (j) all funds held by TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor, if any, and not previously applied against amounts outstanding under the Debts and Liens;
- (k) all rights of Assignor as the owner of the Loan Documents, Debt and Liens to receive payment of the Loan, including, without limitation, Seller's claims and rights in the Borrower's bankruptcy proceeding

captioned In re PB Realty Holdings, LLC, Chapter 7 Case No. 09-16389-WCH, and Seller's proof of claim filed thereunder;

- (l) any and all rights of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor in any existing title policies issued in conjunction with the Second Mortgage or the Third Mortgage;
- (m) all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of TD Bank, N.A. f/k/a TD Banknorth, N.A./Assignor, whether known or unknown, against Borrower, Guarantor, or any of their respective affiliates, agents, representatives, contractors, advisors, or any other party that in any way is based upon, arises out of or is related to any of the Loan Documents, Debt and Liens, including, to the extent permitted to be assigned under applicable law, all claims (including contract claims, tort claims, malpractice claims), suits, causes of action, and any other right of Assignor against any attorney, accountant, financial advisor, or other party arising under or in connection with the Loan Documents, Debt and Liens or the transactions related thereto or contemplated thereby; and
- (n) all proceeds of the foregoing.

6. Upon Lender's receipt of all of the documents referenced in paragraphs 1 through 5 above, Lender shall wire the sum of \$773,277.41 (the "Reinstatement Sum") to the trust account of Stanton & Davis, attorneys at law, who are acting as legal counsel for JP Morgan/Chase under Loan Number 0682726120 (the "Chase Loan"). The Reinstatement Sum equals the amount set forth in the reinstatement letter for the Chase Loan.

7. A material inducement to Lender agreeing to loan monies to Borrower under the Note and to enter into this Agreement is the representation, warranty, promise and agreement of Borrower to (i) list for sale and to sell his home located at 11 Cliff Road, Nantucket, Massachusetts (the "Nantucket Home") within six (6) months of the date of this Agreement and (ii) to utilize the proceeds from the sale of the Nantucket Home, after deduction of all third party expenses of the sale, to fund a Trust to be formed for the benefit of Mia Matthews and her/Borrower's two (2) daughters as beneficiaries. Borrower unequivocally and unconditionally agrees that the Trustee under the aforementioned Trust shall be appointed by Glenn F. Straub and no substitute Trustee may be appointed under the Trust without Glenn F. Straub's express written consent.

8. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, exclusive of choice of law rules, and this Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Lender and Borrower have contributed substantially and materially to the negotiation and preparation of this Agreement. The obligations of the parties are

performable, and venue for any legal action arising out of this Agreement shall lie, in Palm Beach County, Florida.

9. If any material term or provision of this Agreement or the application thereof to any person or circumstances shall be declared invalid and unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such term or provision shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

10. In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs. Wherever provision is made in this Agreement for "attorneys' fees," such term shall be deemed to include accountants' and attorneys' fees and court costs, whether or not litigation is commenced, including those for appellate proceedings and for paralegals and similar persons.

11. Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

12. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

13. All terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

14. Typewritten or handwritten provisions which are inserted in or attached to this Agreement as exhibits, if any, shall control all printed or pre-typed provisions of this Agreement with which they may be in conflict.

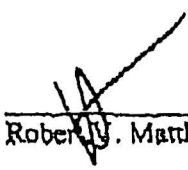
15. Time is of the essence as to all material terms of this Agreement.

[signatures appear on page 6]

EXECUTED as of the date first written above in several counterparts, each of which shall be deemed an original, but all of which constitute only one agreement.

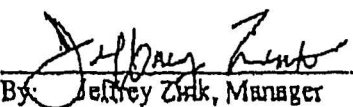
Signed, sealed and delivered:

ASSIGNOR:


Robert J. Matthews

ASSIGNEE:

Equipment Leasing International,
LLC


By: Jeffrey Zink, Manager